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BSS Development Sdn Bhd v Warganet Sdn Bhd

B HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCvC-131-02 OF 2020
SU TIANG JOO JC
7 SEPTEMBER 2023

C *Civil Procedure — Contempt of court — Committal proceedings — Application for — Defendants' failure to comply, breach of and/or default in complying with court's order — Whether court hearing committal proceedings may grant injunction order instead*

D The dispute between the plaintiff and the defendant was over a parcel of land ('the property') that was charged to Maybank Islamic Bhd ('the bank'). Pursuant to an option to purchase agreement ('OTP'), the plaintiff exercised its option to purchase the property for RM45,725,091.48. The OTP was given to the plaintiff in consideration of the deposit amount of RM7m paid to and
E received by the defendant. At the time the plaintiff exercised its option to purchase the property under the OTP, the plaintiff was aware that the bank had commenced an action to secure an order for sale of the property ('foreclosure proceedings'). A sale and purchase agreement was drawn up and executed by the plaintiff ('SPA') but the defendant asserted it was futile to execute it without
F the consent of the bank. On the premise that it was entitled to specific performance of the OTP, the plaintiff commenced an action against the defendant. The plaintiff applied pursuant to O 81 and O 92 r 4 of the Rules of Court 2012 ('the ROC') for an order that the plaintiff be given the liberty to inter alia enter summary judgment against the defendant for specific
G performance of the OTP and the SPA, or alternatively the refund of the RM7m and/or the difference between the purchase price of RM45,725,091.48 and the market value of the property. The application was dismissed. Dissatisfied, the plaintiff appealed to the Court of Appeal, where it was allowed. The Court of Appeal recorded a summary judgment pursuant to O 81 of the ROC on the
H terms, inter alia, that: (i) the defendant shall ensure specific performance of the documents for sale of the property, in the terms of the minutes of judgment attached as Annexure A; and (ii) the plaintiff be given liberty to apply ('the CA order'). The defendant had the SPA executed and wrote to the bank to issue a redemption statement. However, the redemption statement was issued in the
I name of the defendant. The plaintiff filed an ex parte application for leave to apply for an order of committal against the defendant and two directors of the defendant ('proposed contemnors') for their contempt in failing to comply, breach of and/or default in complying with the CA order. Leave was granted ('ex parte order') and the plaintiff filed its application ('encl 67') for an order of

committal be made against the proposed contenmors. The proposed contemnors applied to set aside the ex parte order ('encl 69') and pending the disposal of the application, the committal application be stayed.

Held:

(1) The action on liability had come to an end with a final judgment made in favour of the plaintiff for the OTP agreement to be specifically enforced. Not only was an elaborate set of terms set out in the CA order but liberty to apply was also given. All orders of the court carried with them liberty to apply for consequential orders to work out or to give effect to the final judgment or order. That liberty to apply was expressly given, would underscore the emphasis that the inherent jurisdiction of the court would be invoked to ensure that the court did not act in vain. The underlying reason for the committal proceedings was for the CA order for specific performance to be performed. The court deferred in deciding on the merits of both encls 67 and 69 but instead decided to see how by relying upon the court's inherent jurisdiction, the court could assist without having to resort to the court's contempt jurisdiction. Such a robust and pragmatic approach would facilitate the resolution of the underlying dispute and provide substantive justice to the successful party without potentially crushing the losing party. Therefore, an injunction on the terms as set out in Annexure A was granted and the parties were given liberty to apply (see paras 40, 47 & 51).

[Bahasa Malaysia summary

Pertikaian antara plaintif dan defendan adalah berkaitan dengan sebidang tanah ('hartanah') yang telah dicagar kepada Maybank Islamic Bhd ('bank'). Berdasarkan perjanjian pilihan untuk membeli ('OTP'), plaintif telah melaksanakan pilihannya untuk membeli hartanah tersebut dengan harga RM45,725,091.48. OTP telah diberikan kepada plaintif sebagai pertimbangan bagi jumlah deposit RM7 juta yang dibayar kepada dan diterima oleh defendan. Pada masa plaintif melaksanakan pilihannya untuk membeli hartanah tersebut di bawah OTP, plaintif mengetahui bahawa bank telah memulakan tindakan untuk mendapatkan perintah jualan hartanah tersebut ('prosiding perampasan'). Satu perjanjian jual beli telah disediakan dan ditandatangani oleh plaintif ('SPA') tetapi defendan menegaskan bahawa adalah sia-sia untuk menandatanganinya tanpa kebenaran bank. Dengan premis bahawa ia berhak terhadap pelaksanaan spesifik OTP, plaintif telah memulakan tindakan terhadap defendan. Plaintif memohon mengikut A 81 dan A 92 k 4 Kaedah-Kaedah Mahkamah 2012 ('KKM') untuk satu perintah agar plaintif diberi kebebasan untuk antara lain, memasuki penghakiman ringkas terhadap defendan untuk pelaksanaan spesifik OTP dan SPA, atau sebagai alternatif, pengembalian RM7 juta dan/atau perbezaan antara harga pembelian RM45,725,091.48 dan nilai pasaran hartanah tersebut.

Permohonan tersebut ditolak. Tidak berpuas hati, plaintif merayu kepada Mahkamah Rayuan, yang membenarkan rayuan tersebut. Mahkamah Rayuan turut mencatatkan satu penghakiman ringkas mengikut A 81 KKM dengan terma, antara lain, bahawa: (i) defendan hendaklah memastikan pelaksanaan spesifik dokumen bagi jualan hartanah tersebut, mengikut terma-terma minit penghakiman yang dilampirkan sebagai Lampiran A; dan (ii) plaintif diberi kebebasan untuk memohon ('perintah MR'). Defendan telah menandatangani SPA dan menulis kepada bank untuk mengeluarkan penyata tebusan. Walau bagaimanapun, penyata tebusan dikeluarkan atas nama defendan. Plaintif mengemukakan permohonan ex parte untuk kebenaran memohon perintah komital terhadap defendan dan dua pengarah defendan ('kontemnor yang dicadangkan') kerana menghina mahkamah dengan gagal mematuhi, melanggar dan/atau gagal mematuhi perintah MR. Kebenaran telah diberikan ('perintah ex parte') dan plaintif mengemukakan permohonan ('lampiran 67') agar perintah komital dikeluarkan terhadap kontemnor yang dicadangkan. Kontemnor yang dicadangkan telah memohon untuk mengetepikan perintah ex parte ('lampiran 69') dan sementara menunggu pelupusan permohonan tersebut, permohonan komital ditangguhkan.

Diputuskan:

(1) Tindakan liabiliti telah berakhir dengan satu penghakiman akhir yang dibuat dalam memihak kepada plaintif bagi pelaksanaan spesifik perjanjian OTP. Bukan sahaja satu set terma yang terperinci ditetapkan dalam perintah MR, tetapi kebebasan untuk memohon juga diberikan. Semua perintah mahkamah membawa bersama kebebasan untuk memohon perintah-perintah yang berhubungan bagi melaksanakan atau memberikan kesan kepada penghakiman atau perintah akhir. Kebebasan untuk memohon yang diberikan secara jelas ini menekankan bahawa bidang kuasa yang wujud di dalam mahkamah akan dirujuk untuk memastikan bahawa mahkamah tidak bertindak sia-sia. Alasan utama bagi prosiding komital adalah untuk memastikan perintah MR bagi pelaksanaan spesifik dilaksanakan. Mahkamah menangguhkan keputusan mengenai merit kedua-dua lampiran 67 dan lampiran 69 tetapi sebaliknya memutuskan untuk melihat bagaimana dengan bergantung kepada bidang kuasa yang wujud di dalam mahkamah, mahkamah dapat membantu tanpa perlu menggunakan bidang kuasa komital mahkamah. Pendekatan yang kukuh dan pragmatik ini akan memudahkan penyelesaian pertikaian yang mendasari dan memberikan keadilan substantif kepada pihak yang berjaya tanpa memberikan tekanan yang berpotensi kepada pihak yang kalah. Oleh itu, satu injunksi dengan terma-terma yang ditetapkan dalam Lampiran A telah diberikan dan pihak-pihak telah diberikan kebebasan untuk memohon (lihat perenggan 40, 47 & 51).]]

Cases referred to

Dr Jeyalakshmi a/p Ratnavale & Ors v Tan Sri Dr M Mahadevan & Ors [2021] MLJU 331; [2021] 1 LNS 297, HC (refd)
J & P Coats v Chadwick [1894] 1 Ch 347, Ch D (folld)
JSC BTA Bank v Ablyazov (No 14) [2017] QB 853, QBD (consd)
Lim Eng Kay v Jaafar bin Mohamed Said [1982] 2 MLJ 156; [1982] CLJ Rep 190, FC (refd)
Malloch v Aberdeen Corporation [1971] 1 WLR 1578, HL (refd)
Plimpton v Spiller [1874-80] All ER Rep Ext 1767; (1876) IV Ch 286, CA (refd)
Said Dharmalingam bin Abdullah (formerly known as Dharmalingam a/l Ranganathan) v Malayan Breweries (Malaya) Sdn Bhd [1997] 1 MLJ 352; [1997] 1 CLJ 646, SC (refd)
Sinar Wang Sdn Bhd v Ng Kee Seng [2005] 2 MLJ 42; [2004] 3 CLJ 679, CA (refd)
Stone World Sdn Bhd v Engareh (M) Sdn Bhd [2020] 12 MLJ 237, FC (refd)
Zainab bte Mohamed v Syarikat Permodalan Johor (PP) Sdn Bhd [1998] MLJU 492; [1998] 4 CLJ SUPP 262, HC (refd)

Legislation referred to

Rules of Court 2012 O 52 r 3, 3(2), O 81, O 92 r 4

Lim Chee Wee (with Karen Ng Gek Suan) (Karen, Mak & Partners) for the plaintiff.
Ramesh a/l Kanapathy (with Tharshana a/p Sivananthan) (Chellam Wong) for the defendant.

Su Tiang Joo JC:

INTRODUCTION

[1] Instead of making a decision during committal proceedings on whether a contempt had been committed for allegedly disobeying an order for specific performance, this court had deferred the decision of that question to a further and final hearing and made an order for injunction on 11 July 2023. Dissatisfied, the proposed contemnors appealed and these are the grounds for the decision made.

SALIENT FACTS

[2] The dispute between the plaintiff and the defendant is over a parcel of land held under freehold title under Geran 218971 Lot No 1119, Bandar Sri Sendayan, Daerah Seremban, Negeri Sembilan (the said 'property').

[3] The said property is charged to Maybank Islamic Bhd (the 'bank').

[4] Pursuant to an option to purchase agreement ('OTP') dated 5 January 2018, the plaintiff exercised its option to purchase the said property for Ringgit Malaysia ('RM') 45,725,091.48 by way of a letter dated 6 January 2020. This OTP was given to the plaintiff in consideration of the deposit amount of RM7m paid to and received by the defendant.

[5] At the time the plaintiff exercised its option to purchase the said property under the OTP, the plaintiff was aware that the bank had commenced an action to secure an order for sale of the said property ('foreclosure proceedings'). A sale and purchase agreement was drawn up and executed by the plaintiff (the 'SPA') but the defendant asserted it is futile to execute it without the consent of the bank.

[6] On the premise that it is entitled to specific performance of the OTP, the plaintiff commenced this action. Besides seeking for an order for specific performance, the plaintiff prayed for consequential orders for the defendant to execute the SPA and all relevant documents, and to forward other relevant documents in relation to the sale transaction of the said Property to effect the registration of the property in favour of the plaintiff.

[7] The plaintiff also sued for general damages, interest thereon at 5% pa from the date of assessment until full settlement, costs on a solicitor client indemnity basis and such further or other reliefs as this honourable court deems fit and just.

[8] The defendant opposed the action. In its defence, it asserted that the transaction between the parties was in actual fact a money lending transaction wherein the plaintiff would loan the defendant RM7m with a tenure of two years with agreed interest of RM600,000 to be paid at the expiry of the first year or RM1.5m as agreed interest at the expiry of the second year.

[9] As for the OTP the defendant asserted it was to serve only as a form of security for the money lending transaction.

APPLICATION FOR SUMMARY JUDGMENT AT THE HIGH COURT

[10] The plaintiff took out an application (encl 14) on 5 August 2020 pursuant to O 81 and or O 92 r 4 of the Rules of Court 2012 ('the ROC') for an order that the plaintiff be given liberty to inter alia enter summary judgment against the defendant for specific performance of the OTP and the SPA, or alternatively the refund of the RM7m and or the difference between the purchase price of RM45,725,091.48 and the market value of the said property, general damages, interest thereon, costs, such further or other reliefs as this honourable court may deem fit and with liberty to apply.

[11] After the usual exchanges of affidavits and written submissions, the application (encl 14) was heard before Justice Ahmad bin Bache who dismissed it with costs of RM2,000 on 31 March 2021. Dissatisfied, the plaintiff appealed against this decision to the Court of Appeal.

APPEAL AT THE COURT OF APPEAL

[12] At the Court of Appeal, the appeal was heard on 20 January 2022 and it was allowed.

[13] As the terms of the Court of Appeal order formed the basis of the committal proceedings being heard in the High Court, I set them out in full hereunder but to facilitate reading, the designation of the parties are that as used in the High Court.

[14] The Court of Appeal adjudged that:

(1) the plaintiff's appeal is allowed with costs;

(2) the High Court order dated 31 March 2021 is set aside;

(3) a summary judgment pursuant to O 81 of the ROC was recorded in favour of the plaintiff against the defendant on the following terms:

   (a) the defendant shall ensure specific performance of the following documents for sale of all that parcel of land held under the freehold title Geran 218971, Lot 1119, Bandar Sri Sendayan, Daerah Seremban, Negeri Sembilan ('the property'), *in the terms of the minutes of judgment attached hereto as Annexure A*:

      (i) option to purchase agreement dated 5 January 2018 entered into between the plaintiff and the defendant ('OTP agreement'); and

      (ii) sale and purchase agreement annexed to the OTP agreement;

   (b) the plaintiff be given liberty to apply for further or subsequent orders including but not limited to all orders required to effect the registration of transfer of the Property by the defendant to the plaintiff;

   (c) cost of this appeal including cost of the application at the High Court shall be paid by the defendant to the plaintiff;

(4) cost of RM10,000 for the costs here and below shall be paid by the defendant to the plaintiff subject to allocator fees.

[15] In the Annexure A which is also set out hereunder, is an elaborate set of minutes to facilitate compliance:

ANNEXURE A

MINUTES OF JUDGMENT

1. The defendant shall ensure specific performance of the following documents for sale of all that parcel of land held under the freehold title Geran 218971, Lot 1119, Bandar Sri Sendayan, Daerah Seremban, Negeri Sembilan ('Property'):

   (a) Option To Purchase Agreement dated 5.1.2018 entered into between the plaintiff and defendant ('OTP Agreement'); and

   (b) Sale and purchase agreement annexed to the OTP Agreement.

2. The defendant's authorized representative shall sign the Sale and Purchase Agreement referred to in paragraph 1 (b) above ('SPA') and submit to the plaintiff's solicitors the said signed SPA within 7 days from the date of this judgment.

3. The defendant's authorized representative shall sign and/or submit the following documents to the plaintiff's solicitors within 21 DAYS from the date of this judgment pursuant to Clause 5.1 of the SPA:

   (a) a valid and registrable Memorandum of Transfer of the Property free from all encumbrances.

   (b) certified true copies of the quit rent and assessment receipts to the Property for the year 2020, 2021 and 2022,

   (c) defendant's income tax number and branch details.

   (d) any other document necessary for purpose of registering the transfer of the Property from the defendant to the plaintiff *including but not limited* to the following:

   (i) three certified true copies of each of the defendant's authorized signatories' identity card;

   (ii) defendant's Form 24, 44 and 49;

   (iii) defendant's Memorandum and Articles of Association;

   (iv) defendant's directors' and shareholder's resolutions approving the sale/transfer of the Property to the plaintiff.

4. In the event that the defendant's authorized representative fails and/or refuses to sign the documents referred to in paragraphs 2 and/or 3 above within the deadline set out in paragraphs 2 and/or 3 above or at all, the High Court Deputy Registrar is authorized to execute the documents referred to in paragraphs 2 and/or 3 above.

5. The defendant shall apply, obtain and provide to the plaintiff and/or plaintiff's solicitors, within 14 days from the date of this judgment, a copy of the defendant's and/or defendant's solicitors' written request to Maybank Islamic Berhad being the chargee of the Property ('Maybank') to issue a redemption statement *to the plaintiff or plaintiff's financiers*.

6. In the event the defendant fails and/or refuses to provide to the plaintiff and/or plaintiffs solicitors the written request by the defendant to Maybank referred to in paragraph 5 above and/or the defendant fails and/or refuses to make the defendant's written request to Maybank referred to in paragraph 5 above, the plaintiff and plaintiff's solicitors are authorized to request from Maybank to issue a redemption statement to the plaintiff or the plaintiff's financier.

7. *The plaintiff shall have liberty to apply*.

[16] Endorsed on the Court of Appeal's order of 20 January 2022 is what is commonly described as a penal notice. It says as follows:

ENDORSEMENT PURSUANT TO ORDER 45, RULE 5 AND 7 RULES OF COURT 2012

If Warganet Sdn Bhd (Company No 200701016356 (774363-H)), the defendant named in this action, neglects to obey this order by the time therein limited and / or disobeys this order, you Vijayakumar A/L Ratnavelu (IC No 621224–10–8021) and / or Jamaludin Bin Ahmad (IC No 650101–01–5469), *as the directors of* Warganet Sdn Bhd (Company No 200701016356 (774363-H)) will be liable to the process of execution for the purpose of compelling the said Warganet Sdn Bhd (Company No 200701016356 (774363-H)) to obey the same.

PROCEEDINGS AFTER THE COURT OF APPEAL ORDER OF 20 JANUARY 2022 ('CA ORDER')

[17] Within the seven days ordered by the CA order, the defendant had the SPA executed. And, within the 14 days stipulated by the CA order, it wrote to the bank to issue a redemption statement.

CRUX OF THE MATTER

[18] However, the redemption statement was issued in the name of the defendant. The plaintiff asserted that the defendant ought to have caused the Bank to issue it in the name of the plaintiff.

[19] The plaintiff asserted that as per common conveyancing practice, if the redemption statement setting out the amount owing required to be paid to redeem the charge is issued in its name, it can obtain an undertaking from the chargee bank that in the event after the plaintiff makes payment and the charge cannot be discharged, or the property cannot be registered in the name of the plaintiff, the bank is to refund the payment to the plaintiff. Without such an undertaking, the plaintiff worry that the payment it were to make to the credit of the defendant's account with the bank is likely *not* to be refunded but instead, be utilised to reduce the debt owing by the chargor defendant.

[20] The plaintiff's concern is heightened by the fact that the bank had obtained an order for sale of the said property.

[21] The defendant, on the other hand, asserted that it had complied with the CA order by writing to the bank to issue a redemption statement and had forwarded a copy of it to the plaintiff. Thus, to its mind it has discharged its obligations under the CA order.

[22] The plaintiff thought otherwise. Learned counsel for the plaintiff described the defendant's purported act of securing a redemption statement in the name of the defendant and sending it to the plaintiff is but 'mischievous' performance of its obligations. The defendant flatly denied this assertion.

COMMITTAL PROCEEDINGS

Ex parte application for leave (encl 59)

[23] Under cover of a certificate of urgency (encl 59), on 14 October 2022, the plaintiff filed an ex parte application (encl 58) pursuant to O 52 r 3 of the ROC and or the inherent jurisdiction of this honourable court for leave to apply for an order of committal to be taken out against:

(a) the defendant;

(b) Vijayakumar a/l Ratnavelu (NRIC No 621224–10–8021) ('Vijayakumar'); and

(c) Jamaludin bin Ahmad (NRIC No 650101–01–5469) ('Jamaludin'),

(all three collectively referred to as the 'proposed contemnors').

[24] As set out in the penal notice endorsed on the penal notice, both Vijayakumar and Jamaludin are directors of the defendant.

[25] In the main, the plaintiff grounded its ex parte application on the proposed contemnors' contempt in failing to comply with, and being in breach of and/or their disobedience with the CA order.

[26] The plaintiff also prayed that the proposed contemnors do jointly and or separately pay to the plaintiff on a full indemnity basis the costs of and incidental to its application, and such further or order deemed fit and just by this honourable court to grant in the circumstances of the case.

[27] In the accompanying requisite statement (encl 60) filed pursuant to O 52 r 3(2) of the ROC, the plaintiff identified five instances of disobedience of the CA order and described them as follows:

(a) failure of the defendant to apply, obtain and provide to the plaintiff and/the plaintiff's solicitors a copy of the defendant's and/or defendant's solicitors' written request to the bank to issue a redemption statement to the plaintiff/plaintiff's financiers;

(b) failure by the defendant to provide a valid and registrable memorandum of transfer of the property free from all encumbrances;

(c) failure by the defendant to submit to the plaintiff's solicitors within 21 days from the date of the CA order any other document necessary for the purpose of registering the transfer of the property from the defendant to the plaintiff;

(d) failure by the defendant through its representative to provide to the plaintiff's solicitors the certified true copies of the assessment receipts of the property for the year 2022; and

(e) the defendant's acts and/or attempts and continuing acts and/or attempts to frustrate and/or hinder the specific performance ordered under the CA order and/or to disobey, hinder and/or not comply with the CA order as a whole.

[28] Particulars of the alleged five instances of disobedience were given in the statement (encl 60) duly verified by a voluminous affidavit running into three volumes (encls 61, 62 and 63). Written submissions in support of the ex parte application was filed (encl 64) on 19 October 2020.

[29] On 20 October 2020, Justice Ahmad bin Bache granted leave to the plaintiff to commence committal proceedings against the proposed contemnors for their contempt in failing to comply, breach of and or default in complying with the CA order with costs to be determined at the hearing of the application for an order of committal against the proposed contemnors ('ex parte 20 October 2022 order').

Inter partes application for an order of committal (encl 67)

[30] Five days later, on 25 October 2022, the plaintiff filed its application (encl 67) for an order of committal be made against the proposed contemnors.

[31] The proposed contemnors opposed the application and through Vijayakumar, an affidavit was affirmed (encl 68) on 11 November 2022. In this affidavit, Vijayakumar asserted, inter alia, that the order of committal sought by the plaintiff is unjust and ought not to be allowed, and that the plaintiff has not justified the basis for the order sought.

[32] In his 64 paragraphs affidavit with numerous subparagraphs, Vijayakumar in summary deposed that:

(a) personal service of the CA order was only effected on he and Jamaludin on 29 March 2022;

(b) within 14 days of the CA order, the proposed contemnors through their solicitors have via a letter dated 31 January 2022 requested the bank to issue a redemption statement, and this written request was copied to the transactional solicitors for the plaintiff;

(c) para 5 of Annexure A of the CA order only imposed an obligation on the proposed contemnors to apply, obtain and provide to the plaintiff and or plaintiff's solicitors a copy of the written request to the bank to issue a redemption statement, and it did not, in any way expressly require the proposed contemnors to request the bank to issue a redemption statement in favour of the plaintiff and/or the plaintiff's financiers;

(d) further, the decision to whom the redemption statement is to be issued rested solely and absolutely upon the bank and therefore, the proposed contemnors have complied with the CA order. Besides, the proposed contemnors had informed the bank that the defendant has to specifically perform the OTP and SPA and had forwarded a copy of the CA order to the bank;

(e) as for the request by the plaintiff that the defendant write to the bank to irrevocably authorise the bank to issue a redemption statement directly to the plaintiff and/or its financiers, the proposed contemnors responded to say that it did not agree because this would be in conflict with a term in the SPA and in particular cl 6.1 thereof which expressly authorised the proposed contemnors or their solicitors to deal with the request for the redemption statement from the bank;

(f) the plaintiff did not raise any issue at to the redemption statement when it was first issued to the defendant, and only did so when the time for completion of the SPA was coming to an end. This suggests that the alleged breach of the CA order is but an afterthought raised by the plaintiff to justify the application for an order of committal;

(g) the proposed contemnors had provided the plaintiffs transactional solicitors with a valid and registrable memorandum of transfer;

(h) with the sealed CA order having only been served upon the solicitors for the proposed contemnors on 10 March 2022 it was impossible for the proposed contemnors to comply with para 3 of Annexure A of the CA order, and any default or technical default was one brought about by the plaintiff who ought to have sent the CA order much earlier;

(i) with the property being put up for auction by the bank, the property is under the bank's control and it is up to the bank to pay for the quit rent and assessment and efforts were made by the proposed contemnors to secure the same from the bank who later decided to tie it up with the amount required to redeem the charge and this led to delays;

(j) by then, the time stipulated to redeem the property had lapsed and without the letter of consent from the bank, it would be futile to apply for the state authority's consent to transfer the property to the defendant;

(k) subsequently the bank informed the proposed contemnors it will be proceeding with the sale of the property by auction and therefore since it would be impossible for the SPA to be completed it would be futile for the proposed contemnors to provide the certified true copies of the duly paid assessment receipts for the second half of 2022; and

(l) any other omission had been rectified promptly and that the defendant's seal was broken and had to be replaced resulting in the delay in providing the defendant's documents.

Notice of application to set aside the ex parte 20 October 2022 order (encl 69)

[33] On 11 November 2022, the proposed contemnors filed their notice of application (encl 69) to have the ex parte 20 October 2022 order set aside and pending the disposal of this application, that the committal application (encl 67) be stayed.

[34] In summary, the grounds in support of their application in encl 69 are that:

(a) the proposed contemnors have evidence to prove that the alleged instances of disobedience were not within their control and were not brought about by them wanting to delay justice in any manner;

(b) the plaintiff had in its affidavit (encl 61) affirmed by its Head of Legal in support of its ex parte application for leave to commence committal proceedings failed to make a full and frank disclosure of facts which would probably be raised in opposition if the application had been made inter parties;

(c) the plaintiff had merely stated facts favoring its application which the court had relied upon when granting leave to file committal proceedings; and

(d) the material failures on the part of the plaintiff amounted to a breach of procedural safeguards.

Exchange of affidavits and written submissions

[35] There followed multiple exchanges of affidavits and written submissions by both parties. There was also a notice of application (encl 104) for extension of time to regularise the filing of an affidavit (encl 88) and for it to be relied upon. This was allowed on 9 May 2023 when both applications in encls 67 and 69 came before me.

Hearing of encls 67 and 69

[36] When both applications came up for hearing on 9 May 2023, I directed that both are to be heard together but encl 69 to be proceeded with first. The hearing could not be concluded on 9 May 2023 and was adjourned to 12 May 2023.

[37] On the resumed hearing on 12 May 2023, learned counsel for the proposed contemnors completed presenting his oral submissions and prayed for the ex parte 20 October 2022 order to be set aside. He sought for a ruling to be made on encl 69 and only if necessary that the hearing of encl 67 be proceeded with.

[38] I reaffirmed my ruling made on 9 May 2023 for both applications to be made so as to avoid a staggered hearing with the view that in the event of any appeal, the decisions for both applications can be taken together so as to save time and costs. The reason is not difficult to fathom. If encl 69 is allowed and the ex parte 2010 order is set aside, encl 67 will be rendered academic because it is anchored on the validity of the ex parte 2010 order. However, if the ex parte 2010 order is reinstated on appeal, encl 67 will be revived to be heard. Thus, common sense would dictate that both applications be heard together seeing that the underlying factual matrix would be rather similar, so that in the event of any appeal, they can both be taken together as well.

[39] Submissions were then presented for encl 67 as well, but the hearing could not be completed with the hearing adjourned to 31 May 2023. On 31 May 2023, with further written submissions having been filed, at the request of both parties, they were allowed to put in their final submissions in reply by 7 June 2023 with clarifications and or decision scheduled for 16 June 2023.

THE COURT'S ANALYSIS AND FINDINGS

[40] After going through the numerous affidavits, the multiple written submissions filed and having heard the oral submissions presented, and having

given the matter anxious consideration, I came to the considered preliminary view: A

(a) the action on liability has come to an end with a final judgment made in favour of the plaintiff for the OTP agreement to be specifically enforced;

(b) not only was an elaborate set of terms set out in the CA order but liberty to apply was also given. It is settled law that all orders of the court carry with them liberty to apply for consequential orders to work out or to give effect to the final judgment or order, see *Stone World Sdn Bhd v Engareh (M) Sdn Bhd* [2020] 12 MLJ 237 at paras [34]–[36] where the Federal Court speaking through Nallini Pathmanathan FCJ said: B C

> [34] ... Importantly the court pointed out that the application for consequential orders was neither a rehearing nor a re-opening of the case. The judge cited *Fritz v Hobson* [1880] 14 Ch D 542 at p 561, which sets out the fundamental principle expounded by Fry J at p 561 on liberty to apply in relation to orders of court. It bears repeating here: D
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> In the next place, it is said that I have no jurisdiction to amend the judgment or to grant this application, because the Court has no jurisdiction to rehear an action. In my opinion I have jurisdiction to grant this application. In the first place, it is to be borne in mind that an order was made, although it was not drawn up, directing the motion in question to stand until the trial. According to my understanding of the practice (and this is confirmed by what the Master of the Rolls has said) all orders of the Court carry with them in gremio (in gremio legis is a Latin term which means In the bosom of the law') liberty to apply to the court. E F
>
> [35] The rationale above was relied upon by this court in *Sungai Biak Tin Mining* per Suffian LJ. Additionally, the above ratio has been consistently followed by our courts (see *Societe Des Etains De Bayas Tudjuh v Woh Heng Mining Kongsi* [1978] 2 MLJ 267 at p 270; *Sungei Biak Tin Mines Ltd v Saw Choo Theng & Anor (No 2)* [1970] 2 MLJ 226 at p 227, *Leong Ah Weng v Neoh Thean Soo & Anor* [1983] 2 MLJ 119 at p 120). G
>
> [36] From our case-law it is evident that liberty to apply for consequential orders in order to work out or give effect to the final judgment or order of the court is well within the inherent jurisdiction of the court.

(c) in my considered view, that liberty to apply is *expressly* given, would underscore the emphasis that the inherent jurisdiction of the court will be invoked to ensure that the court does not act in vain, a maxim attributed to Lord Wilberforce in *Malloch v Aberdeen Corporation* [1971] 1 WLR 1578, at p 1595B and quoted by Edgar Joseph Jr FCJ in *Said Dharmalingam bin Abdullah (formerly known as Dharmalingam a/l Ranganathan) v Malayan Breweries (Malaya) Sdn Bhd* [1997] 1 MLJ 352; [1997] 1 CLJ 646 (FC); H I

(d) see also *Dr Jeyalakshmi a/p Ratnavale & Ors v Tan Sri Dr M Mahadevan &*

Ors [2021] MLJU 331; [2021] 1 LNS 297 where I said at para [21]:

> [21] With respect, what YA Dato' Radzi J had done was to merely seek clarification on the alleged problems faced in enforcing or executing the said order of 2 April 2019 and *it having been confirmed that there is indeed a problem, it is the court's duty to assist* so that it is not seen that the court has acted in vain and there are ample authorities for this principle, see for eg *Lim Eye Thun v Majlis Peguam Malaysia* [2010] 2 CLJ 45 (CA) at para [66] where it quoted from the decision of the Supreme Court in *Menteri Hal Ehwal Dalam Negeri, Malaysia v Karpal Singh Ram Singh* [1992] 1 CLJ 36 that:
>
> Cases cited by the learned judge (*Sun Life Assurance Company of Canada v Jervis* [1944] AC 111, *Loknath Padhan v Birendra Kumar AIR* [1974] SC 505 and *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82; [1988] 1 CLJ 224 (Rep); [1988] 2 CLJ 597) constitute ample authorities *for the court not to act in vain*.

(e) the underlying reason for the committal proceedings was for the CA order for specific performance to be performed. From my analysis, the crux of the complaint by the plaintiff before me is that if the Bank were to be authorised to give a redemption statement directly to the plaintiff, the SPA brought about by the OTP agreement which had been ordered to be specifically performed, can be facilitated; and

(f) therefore, I posed a question to learned counsel for both parties whether in hearing an application for an order of committal, the court may exercise its inherent jurisdiction to make an order for injunction for such authority to be given by the first defendant to the bank.

[41] Having expressed my preliminary view on 16 June 2023, the hearing of both encls 69 and End 67 was adjourned to 21 June 2023 for parties to revert on whether the court is to grant relief by ordering the first defendant to write to the bank to authorise it to issue a redemption statement in favour of the plaintiff directly, which the bank was initially not minded to do as it has no contractual obligations with the plaintiff. The bank later reconsidered, but sought an indemnity from the plaintiff who found it objectionable as it may expose it to a liability far greater than its obligations under the OTP and SPA.

[42] On 21 June 2023, learned counsel for the plaintiff placed reliance upon their written submissions (encl 140) to submit that the High Court has inherent jurisdiction pursuant to O 92 r 4 of the ROC which is reproduced hereunder, to grant injunction orders.

> 4 Inherent powers of the Court (O 92 r 4)
>
> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[43] The plaintiff made reference to *Atkin's Court Forms Malaysia*, under the caption of 'Committal' at para [4202] on 'Alternatives To Committal' where there is this note which says that:

> ... The court may also, instead of granting an order of committal, grant an injunction against the repetition of the contempt by the contemnor or his abettors.

[44] I find the above note from *Atkin's Court Forms Malaysia* to be not helpful to the instant case, as it refers to a situation in which a finding of contempt has been made and what the alternatives are to committal.

[45] However, through the industry of the legal team for the plaintiff, the following authorities cited by them proved to be helpful. They are:

(a) *J & P Coats v Chadwick* [1894] 1 Ch 347 where the plaintiffs, who were manufacturers of sewing-cotton on a large and extensive trade, commenced an action against the defendants, who were also manufacturers of sewing-cotton in a large way, for an injunction to restrain them from infringing the plaintiffs' registered trade mark, No 4618, and for an injunction to restrain them from representing by means of wrappers, labels, tickets, or otherwise, that the goods made and sold or offered for sale by the defendants were the goods of the plaintiffs, and for damages or an account. On the same day that the plaintiffs issued their writ, they sent out to retail dealers in the sewing-cotton trade and to others a circular saying the defendants have imitated their goods and have resorted to unfair competition. The defendants moved for an injunction and or in the alternative a writ of sequestration against the property of the plaintiffs for contempt of court. Chitty J, inter alia, held that:

> ... *It is competent for the Court, where a contempt is threatened or has been committed to, to take the more lenient course of granting an injunction in preference to making an order for committal or sequestration: Plimpton v Spiller* Law Rep 8 Eq 580.
>
> ... *On such a motion as the present, the Court declines to go into the merits of the action. The circumstance that the moving parties press for the less severe remedy by injunctions rather than the more stringent remedy by committal or sequestration makes no difference.*
>
> *I grant the injunction as asked*, with costs adding I should not have intervened if the circular had amounted to a mere warning to the trade against infringement or imitation.

(b) in the case cited by Chitty J above ie that of *Plimpton v Spiller* [1874-80] All ER Rep Ext 1767; (1876) IV Ch 286, is a case on an alleged infringement of a patent on roller skates. There the plaintiff obtained an interlocutory injunction to restrain the defendants until the trial of the action or further order, from making, using, or putting in practice an

alleged infringing version of roller skates. The plaintiff then later moved to commit the defendants for breach of the injunction. *The Master of the Rolls did not make an order for committal but on the undertaking of the plaintiff as to damages, granted an injunction* to restrain the defendants until further order from making or selling any of the product like that of the plaintiff's roller skates. On appeal the Court of Appeal speaking through James LJ said:

> *I think on the whole, that the Master of the Rolls had made the right order*, viz, by granting the injunction and putting the Plaintiff upon an undertaking to abide by such order (if any) as to damages as the Court may think fit to make if he should ultimately turn out to be in the wrong; and that it would not be right in this case merely to put the Defendant upon the terms of keeping an account, which I conceive might be very clumsy and inefficient mode of recompensing the Plaintiff if he should turn out ultimately to be in the right.

[46] Learned counsel for the proposed contemnors pointed out that in *Plimpton v Spiller* what was granted was a prohibitory order. However, what the plaintiff is seeking here is a mandatory injunction to compel the proposed contemnors to write to the bank to authorise the bank to issue a redemption statement in favour of the plaintiff. This, he submitted, this court cannot do and he referred to *JSC BTA Bank v Ablyazov (No 14)* [2017] QB 853 QB (Commercial Court) (CA). In *JSC BTA Bank*, the ratio decidendi that could be distilled on the issue of contempt can be found in para 18 where Teare J held:

> ... Those who disobey orders of the court may be punished for their contempt. Although it is usually an individual who instigates proceedings for contempt and although he hopes that by doing so the contemnor will decide to respect his rights the law of contempt is not focused upon compensating litigants who have suffered loss as a result of failures to obey orders of the court. That is the concern of the private law of obligations, typically contract and tort. *The law of contempt is focused upon punishing those who fail to obey orders of the court with the aim of thereby maintaining the authority of the court in the public interest. Principle would therefore suggest that the court, when exercising its contempt jurisdiction, does not have power to compensate individuals by an order for damages.*

[47] Thus, in *JSC BTA Bank* it was decided that the court in exercising its contempt jurisdiction does not have power to compensate individuals by an order for damages. It does not lay down any principle prohibiting the grant of an injunction. Therefore, I considered how due compliance with the CA order can be enforced. In this, I favoured the approach used in *J & P Coats v Chadwick*. I therefore deferred in deciding on the merits of both encls 67 and 69. Instead, I decided to see how by relying upon the court's inherent jurisdiction, this court can assist without having to resort to the court's contempt jurisdiction. Such a robust and pragmatic approach would, in my considered view, facilitate the resolution of the underlying dispute and provide

substantive justice to the successful party without potentially crushing the losing party. I favour this approach to ensure that a court does not act in vain, and that a party who has undergone due process, incurred costs and time with its accompanying trials and tribulations, and having seemingly won a court order in his favour ought not to be frustrated with being vexed with a sense that justice is illusory when it comes time to harvest the fruits of his litigation.

[48] Besides placing reliance upon the inherent jurisdiction of this court. I observed that in both encls 67 and 69 the plaintiff and the proposed contemnors have each included an omnibus prayer that this honourable court may make such order and or relief as this honourable court may deem fit and just in the circumstances of this case. In *Lim Eng Kay v Jaafar bin Mohamed Said* [1982] 2 MLJ 156; [1982] CLJ Rep 190, Salleh Abas FJ said these words which have since been immortalised:

> In any case prayer (e) in para (7), 'Any other relief which this Honourable Court deem fit to grant' must not be treated as a mere ornament to pleadings devoid of any meaning.

[49] It is indisputable that a decree of specific performance is an equitable relief. If at all authority is required for this immutable principle, see *Sinar Wang Sdn Bhd v Ng Kee Seng* [2005] 2 MLJ 42; [2004] 3 CLJ 679 (CA) where Gopal Sri Ram JCA (later FCJ) said:

> Further, the prayer in the plaintiffs statement of claim for 'other relief that this Honourable Court deems fit and just' was sufficient for the exercise of equitable jurisdiction to mould the decree of specific performance to fit the facts as found by the learned judge.

[50] See also *Zainab bte Mohamed v Syarikat Permodalan Johor (PP) Sdn Bhd* [1998] MLJU 492; [1998] 4 CLJ SUPP 262 Justice Malik Ishak (later JCA) said:

> Simply put, specific performance is an equitable relief given by the court to enforce against a defendant the duty of doing what he agreed by contract to do.

CONCLUSION

[51] Wherefore, this court granted an injunction on the terms as set out in Annexure A which is appended as part of these grounds of judgment, and with the parties being given liberty to apply. With the plaintiff not seeking any order as to costs, no order is made on costs.

A

Lampiran A

B

1. Defendan dan pengarah-pengarahnya, Vijayakumar a/l Ratnavelu (No. K/P: 621224-10-8021) dan Jamaludin Bin Ahmad (No. K/P: 650101-01-5469) hendaklah memenuhi Penghakiman Mahkamah Rayuan No.: W-02(IM)(NCVC)-720-04/2021 bertarikh 20.1.2022, termasuk seperti berikut:-

C

(a) Defendan hendaklah membuat permintaan secara bertulis kepada Maybank Islamic Berhad dan Malayan Banking Berhad yang merupakan pemegang gadai kepada hartanah yang dipegang dibawah pegangan bebas Geran 218971, Lot 1119, Bandar Sri Sendayan, Daerah Seremban, Negeri Sembilan ("**Hartanah**") untuk mengeluarkan satu penyata penebusan (*redemption statement*) Hartanah kepada Plaintif atau pembiaya Plaintif seperti dilampirkan di "**Lampiran A-1**" dalam masa **tujuh (7) hari bekerja** daripada 11.7.2023;

D

(b) Defendan hendaklah membuat pengesahan secara bertulis seperti dilampirkan sebagai "**Lampiran A-2**" seandainya benar dan menyerahkan yang sama kepada peguamcara Plaintif dalam Perjanjian Jual Beli, Isharidah, Ho, Chong & Menon ("**IHCM**") dalam masa **tujuh (7) hari bekerja** daripada 11.7.2023;

E

(c) Wakil Defendan yang telah diberikuasa hendaklah melengkapkan, menandatangani (termasuk meletakkan meterai biasa syarikat Defendan) '*Borang Permohonan Kebenaran Pindahmilik Tanah*' seperti dilampirkan sebagai "**Lampiran A-3**" dan menyerahkan yang sama kepada IHCM dalam masa **tujuh (7) hari bekerja** daripada 11.7.2023;

F

(d) Plaintif diberi kebebasan untuk membayar cukai tanah dan cukai pintu Hartanah dan bayaran dibuat oleh Plaintif harus dibayar balik oleh Defendan kepada Plaintif dan/atau dipotong daripada baki harga jualan Hartanah dibawah Perjanjian Jual Beli Hartanah di antara Plaintif dan Defendan;

G

(e) Defendan hendaklah dalam masa **empat belas (14) hari** daripada permintaan bertulis dari Plaintiff/IHCM melengkapkan, menandatangani dan/atau menyerahkan sebarang/apa-apa dokumen-dokumen yang diperlukan untuk tujuan pelaksanaan pendaftaran pindahmilik Hartanah tersebut dari Defendankepada Plaintif/IHCM (termasuk dan tidak terhad kepada Borang 14A yang barujika perlu).

H

I

PENGINDORSAN MENGIKUT ATURAN 45, KAEDAH 5 DAN 7KAEDAH-KAEDAH MAHKAMAH 2012

Jika Warganet Sdn Bhd (No. Syarikat: 200701016356 (774363-H)), Defendan yang dinamakan dalam tindakan ini, abai mematuhi perintah ini mengikut masa yang dihadkan dalamnya itu dan/atau mengingkari perintah ini, kamu Vijayakumar A/L Ratnavelu (No K/P: 621224-10-8021) dan/atau Jamaludin Bin Ahmad (No K/P: 650101- 01-5469), sebagai pengarah-pengarah bagi Warganet Sdn Bhd (No. Syarikat:200701016356 (774363 -H)) boleh dikenakan pelaksanaan, termasuk tanpa had komital kepada penjara untuk penghinaan mahkamah dengan tujuan memaksa Warganet Sdn Bhd (No. Syarikat: 200701016356 (774363 -H)) yang tersebut untuk mematuhi Perintah tersebut.

(English version)

'Annexure A'

1. The Defendant and its directors, Vijayakumar a/l Ratnavelu (NRIC No.: 621224-10-8021) and Jamaludin Bin Ahmad (NRIC No.: 650101-01-5469) shall fulfill the Judgment of Court of Appeal W-02(IM)(NCVC)-720-04/2021 dated 20.1.2022, including the following:-

(a) The Defendant shall make a request in writing to Maybank Islamic Berhad and Malayan Banking Berhad who are the chargees of the property held under the freehold title Geran 218971, Lot 1119, Bandar Sri Sendayan, Daerah Seremban, Negeri Sembilan ("**Property**") to issue a redemption statement of the Property to the Plaintiff or the Plaintiff's financier as annexed in "**Annexure A-1**" within the period of **seven (7) working days** from 11.7.2023;

(b) The Defendant shall make a written confirmation as annexed in " **Annexure A-2**" if true and submit the same to the solicitors for the Plaintiff in the Sale and Purchase Agreement, Isharidah, Ho, Chong & Menon ("**IHCM**") within the period of **seven (7) working days** from 11.7.2023;

(c) The Defendant's representative who is authorized to complete, sign (including affixing the Defendant's company common seal) the '*Borang Permohonan Kebenaran Pindahmilik Tanah*" as annexed as " **Annexure A-3**" and submit the same to IHCM within the period of **seven (7) working days** from 11.7.2023;

(d) The Plaintiff is granted the liberty to pay the quit rent and assessment of the Property and the payment made by the Plaintiff shall be reimbursed by the Defendant to the Plaintiff and/or be deducted from the balance purchase price of the Property under the Sale and Purchase Agreement of the Property between the Plaintiff and the Defendant;

(e) The Defendant shall within the period of **fourteen (14) days** from the written request from the Plaintiff/IHCM, complete, sign and/or hand over any/whatever documents required from the Defendant to the Plaintiff/IHCM for the purpose of effecting the registration of transfer of the Property (including and not limited to the new Form 14A if necessary).

ENDORSEMENT PURSUANT TO ORDER 45, RULES 5 AND 7 OF RULES OF COURT 2012

If Warganet Sdn Bhd (Company No: 200701016356 (774363-H)), the Defendant named in this action, neglects to comply with this order within the time limited therein and/or disobeys this order, you Vijayakumar A/L Ratnavelu (NRIC No.: 621224-10-8021) and/or Jamaludin Bin Ahmad (NRIC No.: 650101-01-5469), as the directors of Warganet Sdn Bhd (Company No: 200701016356 (774363-H)) will be liable to, including without limitation committal to prison for contempt of court with the purpose of compelling Warganet Sdn Bhd (Company No.: 200701016356 (774363-H)) as stated to obey with the said Order.

A

LAMPIRAN A-1

DRAFT LETTER TO THE CHARGEE TO BE ISSUED BY WARGANET SDN BHD

B

MAYBANK ISLAMIC BERHAD **By Email, Registered Post & Fax**
Remedial / Asset Reconstruction 2
Corporate Remedial Management
Level 44, Menara Maybank, 100 Jalan Tun Perak,
50050 Kuala Lumpur
Attn: En. Sazril Ambri Sharim / Puan Nurur Radhiah Binti Roslan

C

AND

MALAYAN BANKING BERHAD **By Email, Registered Post & Fax:**
Remedial / Asset Reconstruction 2
Corporate Remedial Management
Level 44, Menara Maybank, 100 Jalan Tun Perak,
50050 Kuala Lumpur
Attn: En. Sazril Ambri Sharim / Puan Nurur Radhiah Binti Roslan [Date]

D

Dear Sirs/Madam

RE:COURT OF APPEAL CIVIL APPEAL NO.: W-02(IM)(NCvC)-720-04/2021 – SALE AND PURCHASE AGREEMENT DATED 26.1.2022 ("SPA")

E

KUALA LUMPUR HIGH COURT CIVIL SUIT NO. WA-22NCvC-131-02/2020
Property : All that parcel of land held under freehold title Geran No.218971, Lot No. 1119, Bandar Sri Sendayan, Daerah Seremban, Negeri Sembilan ("**the Property**")
Vendor : Warganet Sdn Bhd ("**Warganet**")
Purchaser : BSS Development Sdn Bhd ("**BSSD**")
Chargee : Maybank Islamic Berhad and Malayan Banking Berhad
Purchase Price : RM45,725,091.48

F

We refer to the above matters.

G

2. Pursuant to the Court of Appeal Order dated 20.1.2022 and High Court Order dated 11.7.2023 (enclosed herewith), we have been ordered by the Court to request and obtain from you a redemption statement to be issued to in favour of/addressed to **BSS Development Sdn Bhd** within seven (7) working days from 11.7.2023 in respect of the (our) Property currently charged in favour of you.

H

3. We write to request from you for the said redemption statement addressed to/in favour of **BSS Development Sdn Bhd** of Wisma Matrix, No. 57, Jalan Tun Dr. Ismail, 70200 Seremban, Negeri Sembilan. Please provide to **BSS Development Sdn Bhd** directly the said redemption statement of the Property within the Court ordered period. Please also note that BSS Development Sdn Bhd isauthorized to liaise with you on the redemption of the Property.

I

Yours faithfully

WARGANET SDN BHD
Director:

c.c:

1) **BSS DEVELOPMENT SDN BHD** **BY EMAIL & REGISTERED POST**
Wisma Matrix
No. 57, Jalan Tun Dr. Ismail70200 Seremban
Negeri Sembilan

2) **MESSRS. SKRINE** **BY EMAIL & REGISTERED POST**
Advocates & Solicitors
Level 8, Wisma UOA Damansara50, Jalan Dungun
Damansara Heights 50490 Kuala Lumpur
(Ref : CPY/KQX /21522357)

3) **MESSRS. CHELLAM WONG** **BY EMAIL & REGISTERED POST**
Advocates & Solicitors
Unit L-06-08, No. 2, Jalan Solaris, Solaris Mont' Kiara
50480 Kuala Lumpur
(Ref: CW/L/RK/4411.19)

4) **MESSRS. KAREN, MAK & PARTNERS** **BY EMAIL & REGISTERED POST**
Advocates & Solicitors
30F, The Gardens North Tower, Mid Valley City
59200 Kuala Lumpur
(Ref: KNGS/220035)

5) **MESSRS. ISHARIDAH. HO, CHONG & MENON** **BY EMAIL & REGISTERED POST**
Advocates & Solicitors
Unit A11-1 & 11-2, Megan Avenue 1No. 189, Jalan Tun Razak
50400 Kuala Lumpur

A

LAMPIRAN A-2

DRAFT LETTER TO BSSD & IHCM TO BE ISSUED BY WARGANET UNDER IT'S LETTERHEAD

B

Date :

BSS DEVELOPMENT SDN. BHD. **By Email & Registered Post**
(Registration No. 200501012590 (689638-X))
Wisma Matrix
No. 57, Jalan Tun Dr. Ismail
70200 Seremban
Negeri Sembilan

C

AND

MESSRS ISHARIDAH, HO, CHONG & MENON **By Email & Registered Post**
Advocates & Solicitors
Unit A-11-1 & 11-2, Megan Avenue 1
No. 189, Jalan Tun Razak
50400 Kuala Lumpur
(Ref: IHCM/K/AL(PY)/620170735/ZR)

D

Dear Sirs/Madam,

E

RE: COURT OF APPEAL CIVIL APPEAL NO.: W-02(IM)(NCvC)-720-04/2021 – SALE AND PURCHASE AGREEMENTDATED 26.1.2022 ("SPA")

KUALA LUMPUR HIGH COURT CIVIL SUIT NO. WA-22NCvC-131-02/2020

F

Property	:	All that parcel of land held under freehold title Geran No. 218971, Lot No. 1119, Bandar Sri Sendayan, Daerah Seremban, Negeri Sembilan ("**the Property**")
Vendor :		Warganet Sdn Bhd ("**Warganet**")
Purchaser	:	BSS Development Sdn Bhd ("**BSSD**")
Chargee	:	Maybank Islamic Berhad and Malayan Banking Berhad
Purchase Price	:	RM45,725,091.48

We refer to the above matters.

G

2. We hereby confirm that all our/Warganet's company documents/forms and resolutions provided by Messrs Chellam Wong ("**CW**") via its letters dated 28.03.2022, 27.04.2022 and 13.05.2022 ("**CW's Letters**") accurately reflects our/Warganet's corporate details/information and the same can be used for submission of obtaining Consent to Transfer and presentation of transfer in favour of BSSD with the relevant land office.

H

3. Further to CW's Letters, there are additional updates to our/Warganet's corporate details/information which we hereby enclose the following documents (certified true copies by our/Warganet's company secretary) for your action:-

I

LAMPIRAN A-2

(a) three (3) copies of form under Section 58 of the Companies Act 2016, Notification of Change inthe Register of Directors, Managers and Secretaries;
(b) three (3) copies of form under Section 46 of the Companies Act 2016, Notification for Change inthe Registered Address; and
(c) [others]

4. With that, we thereby confirm that all the company documents/forms and resolutions that are provided to you as at the date hereof accurately reflects our/Warganet's corporate details/information and all required company documents/forms and other relevant documents have been duly filed with Companies Commission of Malaysia ("**CCM**"). There are no other company document/form and other relevant document that we have not filed to CCM.

5. As at the date hereof, we hereby confirm the following information reflects our/Warganet's corporate details/information:-

(a) our/Warganet's board of directors consist of:-
(i) [Name] (NRIC No. [ ]); and
(ii) [others];

(b) our/Warganet's shareholders/members and their respective shareholdings are as follow:-

Name of Shareholders/Members & NRIC/Registration No.	No. of Shares and Shareholding
	[no. of shares & types of shares] (%)
	[no. of shares & types of shares] (%)
	[no. of shares & types of shares] (100%)

(c) our/Warganet's company secretary details

are as follow:-[Name] (NRIC No.)
License No. / Membership No. :

SSM Practicing Certificate No. :

(d) our/Warganet's registered office details

are as follow:-[address]

(e) there is nothing in our/Warganet's Constitution and Shareholders Agreement (if any) thatprohibits us/Warganet from selling the Property to BSSD.

Thank you.

Yours Faithfully,

For and on behalf of **WARGANET SDN BHD (Registration No. 200701016356 (774363-H))**

.....

Designation: Director

Name:

LAMPIRAN A-2

c.c.

1) MESSRS CHELLAM WONG
Advocates & Solicitors
Unit L-06-08
No. 2, Jalan Solaris
Solaris Mont' Kiara
50480 Kuala Lumpur
(Ref : CW/L/RK/4411.19(wsm))

BY EMIAL & REGISTERED POST

2) MESSRS. KAREN, MAK & PARTNERS
Advocates & Solicitors
30F, The Garden North Tower
Mid Valley City
59200 Kuala Lumpur
(Ref: KNGS/220035)

BY EMIAL & REGISTERED POST

LAMPIRAN-A3

BORANG PERMOHONAN KEBENARAN PINDAHMILIK TANAH
(SEKATAN KEPENTINGAN SEKSYEN 120 KANUN TANAH NEGARA)

A DUTIRAN PEMOHON DAN PENERIMA

BIL.	PERKARA	PEMBERI / PENJUAL (PEMILIK)	PENERIMA / PEMBELI
1.	NAMA		
2.	NO. KAD PENGENALAN / NO. PENDAFTARAN SYARIKAT		
3.	TARIKH LAHIR (UMUR) / TARIKH DAFTAR SYARIKAT		
4.	NO. TELEFON		
5.	TEMPAT LAHIR		
6.	ALAMAT SURAT MENYURAT		
7.	KEWARNEGARAAN		
8.	STATUS PERKAHWINAN		
9.	PEKERJAAN		
10.	PENDAPATAN BULANAN		
11.	TANGGUNGAN		
12.	PERSAUDARAAN / PERTALIAN		
13.	SYER / BAHAGIAN		

BUTIRAN TANAH DIPINDAHMILIK

NO. HAKMILIK	NO. LOT / PT	BANDAR / PEKAN / MUKIM	DAERAH	LUAS

ALAMAT / LOKASI TANAH	:	
	:	

A

LAMPIRAN-A3

C. TUJUAN PINDAHMILIK (TANDAKAN /)

i. ☐ Pemberimilikan / Kasih Sayang.

B ii. ☐ Jual Beli RM _____

D. BERSAMA-SAMA INI DIKEMUKAKAN BAYARAN DAN DOKUMEN YANG DIKEHENDAKI:

i. ☐ Resit Bayaran Permohonan Kebenaran Pindahmilik **RM70.00** *Bagi Satu (1) Hakmilik..*

ii. ☐ Resit Bayaran Permohonan Kebenaran Pindahmilik **RM200.00** *Warganegara Asing.*

iii. ☐ Resit Bayaran Rayuan Permohonan Kebenaran Pindahmilik **RM100.00** *Bagi Satu (1) Hakmilik..*

iv. ☐ Sijil Carian Rasmi RM40.00

C v. ☐ Salinan Resit Cukai Tanah Tahun Semasa Yang Telah dijelaskan.

vi. ☐ Salinan Resit Cukai Taksiran Tahun Semasa Yang Telah Dijelaskan.

vii. ☐ Salinan Kad Pengenalan Pemberi dan Penerima.

viii. ☐ Perjanjian Jual Beli.

ix. ☐ Salinan Hakmilik Tanah.

D x. ☐ Salinan Sijil Kelahiran.
(Bagi Pindahmilik Kasih Sayang @ Waris Kadim / Lot Bumiputera / Tanah Rizab Melayu)

xi. ☐ Salinan Sijil Pernikahan / Sijil Perkahwinan.
(Bagi Pindahmilik Kasih Sayang @ Waris Kadim)

xii. ☐ Surat Kebenaran daripada Orang-Orang / Badan Yang Berkepentingan.
(Sekiranya Terdapat Kaveat / Gadaian dsb.

xiii. ☐ Petikan Minit Mesyuarat.
(Permohonan Koperasi, Badan Berkanun, Lembaga dsb.)

xiv ☐ Undang-Undang Tubuh Syarikat Form 24, Form 24 & form 49.
(Disahkan Oleh Setiausaha Syarikat & "Common Seal" Syarikat Pada Borang Permohonan)

E xv ☐ Carian SSM Syarikat.

xvi ☐ Resolusi Kuasa Menandatangani Permohonan
(Permohonan Oleh Syarikat.)

xvii ☐ Enakmen Pertubuhan / Syarikat
(Permohonan MPN / MPS / PKNNS / KOPERASI dsb.)

xviii ☐ Surat Kuasa Wakil
(Jika Bukan Pemilik / tuan Tanah Yang Memohon)

F xix ☐ Surat Tolak & Surat Rayuan

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( ) ( )

Tandatangan Pemohon & Nama ***Tandatangan Penerima & Nama***

G

E. UNTUK KEGUNAAN PEJABAT:

Permohonan disemak oleh : .....

LULUS / TOLAK

H **Syor Pentadbir Tanah Seremban** : .....

Nama Penerima diluluskan : .....

Tarikh : ....

Pentadbir Tanah Seremban
Negeri Sembilan Darul Khusus

I

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh